No. 89-1444

In The

Supreme Court of the United States

October Term, 1989

SHRINERS HOSPITALS FOR CRIPPLED CHILDREN,

Petitioner,

vs.

FIRST SECURITY BANK OF UTAH, N.A.,
as Personal Representative of the
Estate of Velma Rife Jones
(deceased), et al.,

Respondents.

On Petition For A Writ Of Certiorari To
The Supreme Court Of Wyoming

BRIEF IN OPPOSITION OF RESPONDENTS FIRST SECURITY BANK OF UTAH, N.A. AND FIRST SECURITY BANK OF ROCK SPRINGS

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QUESTIONS PRESENTED

1. WHETHER THE INTERPRETATION OF THE WYOMING SUPREME COURT OF A WYOMING STATUTE DETERMINING WHETHER PETITIONER IS A NAMED BENEFICIARY IN A WILL PRESENTS A SUBSTANTIAL FEDERAL QUESTION.

2. WHETHER THE DUE PROCESS CLAUSE REQUIRES NOTICE OF A PROBATE SALE OF ESTATE PROPERTY OTHERWISE DEVISED TO A TRUSTEE OF A TESTAMENTARY TRUST TO ALSO BE GIVEN TO A REMAINDER BENEFICIARY OF THAT TRUST IF NOTICE OF THE SALE IS GIVEN TO THE TRUSTEE AND IF THE TRUST'S TERMS PERMIT THE TRUSTEE TO SELL THE PROPERTY WITHOUT NOTICE TO THE TRUST BENEFICIARY.

RULE 29.1 STATEMENT

Respondent First Security Bank of Utah, N.A. is a national banking association. Its parent corporation is First Security Corporation and it has no subsidiary corporations.

Respondent First Security Bank of Rock Springs is a Wyoming corporation. Its parent corporation is also First Security Corporation and it has no subsidiary corporations.

RULE 29.4 STATEMENT

Since the proceeding draws into question the constitutionality of Wyo. Stat. § 2-7-205(b), an act of Wyoming affecting the public interest, and neither the attorney general of Wyoming nor any agency, officer or employee thereof is a party, it is noted that 28 U.S.C. § 2403(b) may be applicable.

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CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant portions of the Constitution of the United States, Amendment 14, Section 1, and Wyoming Statutes 2-7-202, 2-7-205, 2-7-402, 2-7-614, 2-7-615 and 2-7-620 are set out in Appendix D.

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BRIEF IN OPPOSITION OF RESPONDENTS FIRST SECURITY BANK OF UTAH, N.A. AND FIRST SECURITY BANK OF ROCK SPRINGS

Respondents First Security Bank of Utah, N.A. and First Security Bank of Rock Springs respectfully request that the Petition for a Writ of Certiorari sought by Petitioner to review the judgment of the Supreme Court of Wyoming entered on November 15, 1989, be denied.

OPINIONS BELOW

Petitioner appealed the decision of the District Court in and for Sweetwater County, Wyoming to the Supreme

Court of Wyoming. The Supreme Court of Wyoming, in a 3-2 decision, denied Petitioner's original appeal, which is reported at 770 P.2d 1100 (App. A, *infra*). Upon rehearing the Supreme Court of Wyoming, this time in a 4-1 decision, again denied Petitioner's appeal. That decision on rehearing is reported at 782 P.2d 229 (App. B, *infra*). The opinion of the District Court is not officially reported. (App. C, *infra*).

STATEMENT OF THE CASE

Joseph George Jones, Jr., ("Mr. Jones") and Velma Rife Jones, ("Mrs. Jones") owned certain real property located in Sweetwater County, Wyoming, commonly known as the Rife Ranch. (App. A3; R. 197.)[1] The Rife Ranch included 17 non-contiguous parcels of deeded land and various federal and state leases of government-owned property spread over a thirty by twenty mile area in southwest Wyoming.[2] (R. 233.) Mr. Jones, a Utah resident,

[1] "R.___" denotes reference to the original record of the District Court proceedings filed in the Supreme Court of Wyoming.

[2] The fee land of the Rife Ranch is contiguous only by virtue of adjacent federal or state lands which were leased by the Rife Ranch and are completely isolated within the federal and state lands. Additionally, about 23,360 acres of the fee property is located on what is commonly referred to as the "checkerboard" area in which every other section of property was deeded to the railroad for twenty miles on either side of the railroad line. This checkerboard effect made it difficult both to manage and later to market the Rife Ranch. (R. 291, 399-400.)

preceded Mrs. Jones in death. As part of the administration of Mr. Jones' estate, First Security Bank of Utah, N.A. ("First Security-Utah") and First Security Bank of Rock Springs ("First Security-RS") (collectively "Banks"), as co-personal representatives, requested an appraisal of the Rife Ranch to determine its "estimated" value, which appraised at $1.2 million in 1985.[3] (R. 292.)

Approximately one and one-half years after Mr. Jones' death, Mrs. Jones, also a Utah resident, died testate on October 19, 1986. (R. 198.) Mrs. Jones' Will ("Will") contained cash bequests to six surviving cousins and left the remainder to First Security-Utah as Trustee of a charitable remainder unitrust ("Trust"). (App. A3; R. 12-26.) The Trust provides the Trustee with the ordinary powers of a trustee to sell, exchange, and otherwise manage the assets of the Estate. (R. 17-19.) The Trust further provides that at the death of the lifetime beneficiary of the Trust,

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[3] The appraisal clearly indicates in its prefatory pages that it is merely an "estimate" of the "highest price" the property might bring at sale. (R. 250.) The appraiser also noted that a substantial decline in the value of real estate in the area was ongoing, with potential sellers and realtors alike expressing "considerable pessimism with regard to the current real estate market," (R. 290) and that this substantial decline was due in part to "very high mortgage interest, low commodity prices, escalating expenses and a lack of direction concerning federal agricultural programs." (R. 290.) Furthermore, Petitioner insinuates throughout its Brief the impropriety of the sale without a reservation of mineral rights, even though its Brief is devoid of any citation to the record of the value, or even existence of the mineral rights beyond the few sections listed in the appraisal report. (R. 265.) The appraisal does note, however, that First Security-Utah had information on mineral rights and that "[m]inerals in the general area have traditionally been sold all or in part with the surface rights, with no discernible value contribution . . . " (R. 265-266.)

Mrs. Darrell Rife Mork, the remainder of the Trust would be distributed equally to Petitioner and the University of Utah, provided that at such time each qualified as a charitable organization pursuant to §§ 170(c) and 2055(a) of the Internal Revenue Code. (R. 16.)

After Mrs. Jones' death, First Security-Utah and First Security-RS were appointed as the co-personal representatives of Mrs. Jones' Estate ("Estate") (R. 2) and on February 20, 1987 a Petition for Probate of Will was filed by the co-personal representatives of Mrs. Jones' ancillary probate in Wyoming. (R. 4.) The Petition for Probate of Will acknowledged that the Estate had an ownership interest in the Rife Ranch and "estimated" its value at $1.2 million, which figure was based upon the old 1985 appraisal prepared at the death of Mr. Jones. (R. 4.)

In the administration of the Estate, First Security-Utah requested a new appraisal from the same appraiser who had prepared the original 1985 appraisal. On February 24, 1987, the Rife Ranch was reappraised at an estimated value of $925,000. This lower figure represented the rapid decline in the real estate market in southwestern Wyoming over the year and a half since the original appraisal.[4] (R. 378-486.)

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[4] The $300,000 decrease in the estimated value of the Rife Ranch over 1½ years was attributed to a substantial decline of 12-14% per year for recent sales of ranches in the area. The appraiser warned that the second appraisal, which contained estimated values ranging from a low of $820,000 to a high of $1.2 million, was more accurate at the low end since the real estate market was continuing to rapidly decline. Furthermore,

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Several months after the Will was admitted to ancillary probate in Wyoming, Respondent Southern Wyoming Cattle Company, a joint venture of respondents Rock Springs Grazing Association, Lazy VD Land and Livestock, and Elza Eversole, (collectively "Buyers") made a cash offer to the co-personal representative First Security-Utah of $820,000. (R. 488.) Upon receipt of the cash offer, First Security-Utah contacted the appraiser and discussed the offer in connection with the appraisal reports. (R. 492-502.) The appraiser concluded that the cash offer was reasonable because of its cash nature and because the opportunity cost of the money invested, coupled with the continuing decline in land values, outweighed the insignificant 12% differential between the $820,000 cash offer and his $925,000 appraisal.[5] (R. 492-3.)

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the appraiser warned that the sales data relied upon in the appraisal was already eight months old and that in such a declining market the figures were already dated. (R. 399-401.)

[5] Petitioner suggests that the Rife Ranch sold for 30% less than its appraised value of $1.2 million, choosing to completely ignore that: 1) the 1985 appraisal was outdated and was not relied upon by the Estate; 2) a second appraisal was prepared for the Estate; and 3) the appraiser reviewed the cash offer of Buyers and approved its reasonableness. While Petitioner attempts by this artifice to imply egregious conduct, the facts suggest otherwise. The sale of the Rife Ranch was a mere 12% less than the estimated appraised value, which admittedly relied heavily on old data. Furthermore, the figure of $820,000 was one of the valuation figures which the appraiser arrived at in his appraisal, but chose not to use. (R. 400.) Thus, despite Petitioner's underlying suggestion of wrongdoing throughout its Brief, nothing in the record supports such innuendo.

Accordingly, the co-personal representatives filed a Petition for Authority to Sell Real Property and for Confirmation of Sale with the Court, as required by Wyo. Stat. §§ 2-7-614 and 2-7-615. (R. 54.) Pursuant to Wyo. Stat. § 2-7-205, the co-personal representatives contacted each of the named beneficiaries of the Will, the Trustee First Security-Utah and the specific devisees, and obtained waivers of the notice to hearing on the proposed sale.[6] (R. 58.) The reasons for the sale set forth in the Petition for Authority to Sell the Property were that it was in the best interest of the Estate to sell the Rife Ranch because it was not currently in operation; the Estate was in need of liquid assets to pay debt, costs of administration and taxes;[7] and the Trust, through the Trustee, had no desire to own or operate the Rife Ranch.[8]

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[6] Petitioner implies that the Banks had ulterior reasons for not giving formal notice of the proposed sale to Petitioner or the other Trust beneficiaries. Rather, Wyoming Stat. § 2-7-205 requires only that notice be given to the beneficiaries named in the Will, and as a Trust remainderman beneficiary Petitioner was not entitled to, and therefore not given, notice.

[7] Petitioner mistakenly makes the assumption in footnote 7 of its Brief that sufficient liquid assets remained ($108,940) after payment of expenses to provide for the needs of the Estate. However, this simple arithmetic fails to take into account the future income needs of the lifetime beneficiary, Mrs. Mork who was in an enfeebled condition and required intensive medical care. Petitioner also fails to take into account the operational expenses associated with merely maintaining the Rife Ranch. The investment income to be derived from $100,000 would not have met either need, let alone both of them.

[8] Petitioner implies that this language means that the Banks were representing that "Petitioner had no desire to own

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The sale of the Rife Ranch was approved by the District Court on May 19, 1987. (R. 98.) Two months after the sale, Petitioner moved the District Court to set aside the sale pursuant to Wyoming Rules of Civil Procedure, Rule 60(b), the Wyoming equivalent of the federal rule, claiming that it was a beneficiary named in the Will and that, regardless of the needs or best interests of the Estate, its wishes as a prospective Trust remainderman that the property not be sold should supersede all other concerns of the Estate. Petitioner took this position despite the fact that it had no legal interest in the property, no right to notice of sale of the property under Wyoming law and no right to notice of a sale by a Trustee under the terms of the Trust. In fact, the terms of the Trust provide the Trustee with the power, at its sole discretion, to sell the property. (R. 19.) The District Court denied Petitioner's Motion for Relief. (App. C; R. 596-601.)

The Wyoming Supreme Court affirmed the District Court's denial of the Rule 60(b) motion in a 3-2 decision (App. A), holding that a contingent beneficiary of a testamentary trust is not entitled to notice of the proposed sale of an estate asset, thereby making it unnecessary to address other issues raised by Petitioner. (App. A9.) Upon the retirement of Justice Brown, the author of the majority opinion, Petitioner sought a rehearing of the matter. In a

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or operate the property." This is inaccurate. The plain language of the Petition indicates that *the ultimate beneficiary* of the Estate was the *Trust*, which had no desire to own or operate the Rife Ranch. Here, as throughout the Petitioner's Brief, Petitioner misleadingly suggests that it was a beneficiary of the Will, when in fact it was a remainder beneficiary of the Trust.

4-1 decision, written by Chief Justice Cardine, who had earlier dissented, the Wyoming Supreme Court affirmed its earlier decision, except that it withdrew any categorization of Petitioner as a contingent beneficiary. (App. B.) It found such categorization unnecessary to its holding that Wyoming law does not require notice to beneficiaries not named in the Will. (*Id.* at 3.) Thus, the Wyoming Supreme Court reasoned that "any beneficiary of a trust created in a will is not a beneficiary under the will for purposes of the notice requirements" of Wyoming law. (*Id.*)

REASONS FOR DENYING THE WRIT

Petitioner seeks certiorari to the Wyoming Supreme Court in order to obtain additional review of the Wyoming State District Court's refusal to set aside its order approving the sale of the Rife Ranch. This matter has already been considered and rejected by three courts, once by the state district court and twice by the Wyoming Supreme Court.

This case does not involve any important federal issue. The interpretation of a Wyoming probate statute does not present a federal question; nor is that statute or the Wyoming Supreme Court's interpretation of it inconsistent with this Court's precedent. Petitioner had no interest in the administration of the Estate under Wyoming law. Neither does petitioner have any right to control the sale of the Trust's assets. While Petitioner's argument presupposes that it has a property interest in the Jones' Estate, the Wyoming Supreme Court did not

make such a supposition. As Justice Brown cogently observed in the Wyoming Supreme Court's original opinion, Petitioner cannot "bootstrap" its status as a contingent beneficiary of a trust created under a will to transform itself into a beneficiary under the Will. (App. A9.) Likewise, Petitioner cannot "bootstrap" a conjectural and future interest in the Trust to a constitutionally protectable interest in the Estate. Finally, even to the extent it were determined that Petitioner holds some constitutionally cognizable interest, the Wyoming probate procedure accorded those interests appropriate notice.

I.

THIS CASE DOES NOT PRESENT A SPECIAL AND IMPORTANT QUESTION OF FEDERAL LAW.

A. The Interpretation of a State Statute is a Matter Exclusively Within the Province of the State Court.

This Court does not review the judgments of state courts except when the validity of a state statute is drawn into question under federal law. *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945); 28 U.S.C. § 1257(a). This Court does not sit as a "super-legislative body," concerning itself with the wisdom of state law. *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 339 (1969). The decision of the Wyoming Supreme Court dealt with its interpretation of its own state law and this Court should not review a matter of purely state law.

Petitioner asserted at the District Court proceeding that it was a "beneficiary named in the will" and therefore was entitled to notice pursuant to Wyo. Stat. § 2-7-205. (App. A5.) Petitioner argued that failure to

provide it notice violated the requirements of the Wyoming probate statute and, therefore, the probate court's approval of the sale of Estate property should have been set aside. (Id.) The applicable Wyoming statute provides:

> Unless waived in writing by the parties entitled thereto, the notices required in W.S. 2-7-202, 2-7-203, 2-7-204, 2-7-215, 2-7-806, 2-7-807, and 2-7-811 shall be mailed not less than ten (10) days prior to the day of hearing, the date for filing objections, or sale, as the case may be, to the surviving spouse, if any, and to all of the heirs of a decedent dying intestate *or to all of the beneficiaries named in the will of a decedent dying testate.*

Wyo. Stat. § 2-7-205(b) (emphasis added). The question then presented to the Wyoming District Court and subsequently to the Wyoming Supreme Court was whether Petitioner was "a beneficiary named in the will."

This Court has consistently held that the interpretation or construction of a state statute is exclusively within the province of state courts and is not reviewable by the Supreme Court. *Groppi v. Wisconsin*, 400 U.S. 505, 507 (1971), ("[a]s the case reaches us we must, of course, accept the construction that the Supreme Court of Wisconsin has put upon the state statute.")

Here, the only question decided by the Wyoming Supreme Court was the interpretation of whether Petitioner was "a beneficiary named in the will" as provided by Wyo. Stat. § 2-7-205(b). After reviewing the statute, the Wyoming Supreme Court determined that Petitioner was not "a beneficiary named in the will" and therefore was not entitled to notice of the sale of estate property. (App. A8.) On rehearing, the Wyoming Supreme Court

reaffirmed its decision, limiting the scope of its decision to the interpretation of the statute. (App. B3.) Justice Cardine, who dissented in the original opinion, established the narrowness of the Wyoming Supreme Court's decision, when in writing for the majority he noted that:

> [t]he crux of this case is that any beneficiary of a trust created in a will is not a beneficiary under the will for purposes of the notice requirements of §§ 2-7-615 and 2-7-205, W.S. 1977. We need make no further categorization of the status of Shriners Hospitals for Crippled Children than to conclude that it was not a beneficiary under the will.

(App. B3.)[9]

The Wyoming Supreme Court's interpretation of its statute to determine whether Petitioner was a beneficiary named in the Will is the conclusive construction of Wyoming's statute. As such, the question of whether Petitioner is or is not a beneficiary named in the will is not a federal question for this Court.

B. The Interpretation of Wyoming's Probate Code is Exclusively Within the Province of the State Court.

This Court has held in a long line of cases that the orderly disposition of property at death is primarily a

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[9] It is significant to note that Justice Cardine in his original dissenting opinion felt that notice could be required by the due process clause, but that it was unnecessary to so decide because he interpreted the statute to mean that Petitioner was "a beneficiary named in the will." (App. A10.) Obviously, on rehearing he did not feel due process required notice to the parties other than the beneficiaries named in the will and Petitioner, as a beneficiary not named in the will did not have right to notice as a matter of statutory interpretation.

state law decision. *See, e.g. Farrell v. O'Brien*, 199 U.S. 89 (1905). In *Trimble v. Gordon*, 430 U.S. 762, 771 (1977) this Court reaffirmed that principle, noting that:

> [t]he orderly disposition of property at death requires an appropriate legal framework, the structuring of which is a matter particularly within the competence of the individual states . . . Absent infringement of a constitutional right, the federal courts have no role here, and even when constitutional violations are alleged, these courts should accord substantial deference to a State's statutory scheme of inheritance.

Certainly, the question of whether a party is a "beneficiary named in the will" is particularly a matter within the competence of the state court and its statutory scheme of probate. Review in this case would undermine the traditional deference given the states in such probate matters.

Because this Court does not substitute its own judgment for a state Supreme Court's construction of state laws, and particularly those relating to probate matters, and because those were the only issues decided by the Wyoming Supreme Court, this case offers only a narrow federal issue for the Court's review. The only potential role for this Court in this case would be to consider arguments that Wyoming's probate statute, as finally construed by the Wyoming Supreme Court, "is repugnant to the Constitution." 28 U.S.C. § 1257(a).[10]

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[10] Petitioner's jurisdictional statement evades a direct challenge to the constitutionality of the Wyoming probate statute, seeking instead to base this Court's jurisdiction on the assertion that the Wyoming Supreme Court's decisions are repugnant to the Constitution. Section 1257(a) does not permit

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C. The Issue of the Constitutionality of the Wyoming Statutory Probate Procedure Has Not Been Raised.

Petitioner has yet to assert that Wyoming's probate statute is unconstitutional. The Court's certiorari jurisdiction over decisions from state courts derives from 28 U.S.C. § 1257(a) which provides that:

> [f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution.

In exercising such jurisdiction this Court has held that it has no jurisdiction over such issues unless a federal question has been properly presented or determined in the court below. *Illinois v. Gates*, 462 U.S. 213, 218 n. 1 (1983).

The Wyoming Supreme Court's original opinion and its opinion on rehearing are both silent on the issue of the constitutional claim of Petitioner. In the Wyoming Supreme Court's original opinion, the Court listed the issues presented by Petitioner with no mention of a constitutional issue. (App. A2.) Clearly the Wyoming Supreme Court did not address or decide the issue now being urged upon this Court. This Court has stated that "when, as here, the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the

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such a theory. Petitioner does not suggest a conflict with any federal statutory law nor specially claim any title, right or privilege under the Constitution. Therefore, Petitioner must challenge the statute's validity or this Court lacks jurisdiction.

state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Street v. New York*, 394 U.S. 576, 582 (1969).

Rule 5.07 of the Wyoming Rules of Appellate Procedure provides that "[i]n all cases both criminal and civil . . . in which a statute is alleged to be unconstitutional . . . counsel shall also serve a copy of their brief upon the attorney general." The reason for such a rule is obvious: "[t]he attorney general, being the chief legal officer of the State, has a duty to protect the interests and the welfare of the people in declaratory judgment actions where statutory constitutional questions are in issue." *Ririe v. Board of Trustees of School District No. One*, 674 P.2d 214, 219 (Wyo. 1983), citing *Tobin v. Pursel*, 539 P.2d 361, 365 (1975).[11] Compliance with this rule is mandatory and failure to comply can render an appeal vulnerable to dismissal for lack of jurisdiction. *Ririe*, 674 P.2d at 220.[12] The constitutionality of the statute was not properly presented to the Wyoming Supreme Court as a result of this

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[11] While *Tobin* was concerned with an appeal from a declaratory judgment action, the *Ririe* decision makes it clear that the purpose of the Wyoming Rules of Appellate Procedure are the same and the "need for the state's chief legal officer to protect the public interest does not depend upon the classification of the proceedings in which the constitutional challenge arises." *Ririe*, 674 P.2d at 219.

[12] The appeal was not dismissed in *Ririe* because the appellant belatedly complied with the rule and therefore the court was "not asked to render a decision on the constitutionality of a state statute without the benefit of the viewpoint of the representative of the people of this state." *Ririe*, 674 P.2d at 220.

failure. Such failure must be assumed to be a basis for the Wyoming Supreme Court's silence on the constitutional issue.

Petitioner has also failed to provide appropriate notice of this proceeding pursuant to United States Supreme Court Rules, Rule 29.4. Rule 29.4 requires that "[i]n any proceeding in this Court wherein the constitutionality of any statute of a State is drawn into question, and the State or any agency, officer, or employee thereof is not a party, the initial pleading, motion, or paper filed in this Court shall recite that 28 U.S.C. § 2403(b) may be applicable and shall be served upon the attorney general of that State." 28 U.S.C. § 2403(b) provides that "[i]n any action, suit, or proceeding in a court of the United States to which a state or any agency, officer or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene . . . "

Petitioner has not raised the constitutionality of Wyoming's probate statute and that issue, accordingly, is not before this Court.

D. The Sufficiency of Wyoming's Probate Procedure Is Not a Special and Important Federal Question.

Even were a challenge to the constitutionality of the state statute properly presented, there is no generally applicable principle of constitutional law to be derived from the Court's acceptance of this case. As this Court's

own rules provide, a review by writ of certiorari "is not a matter of right, but of judicial discretion and will be granted only when there are special and important reasons." United States Supreme Court Rules, Rule 10. This case does not present this Court with either a special or an important issue. Petitioner's claim in this case depends solely upon the terms of an individual Trust, the terms of a particular Will, the application of one state's probate laws and the unusual circumstance that the Trustee of a testamentary Trust also serves as personal representative of the Estate. While such unique facts may present an interesting intellectual exercise, they do not supply the special and important reasons required for a grant of certiorari; special and important reasons "imply a reach to a problem beyond the academic or episodic." *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955). Constitutional review of Petitioner's claim would necessarily be limited to the peculiar circumstances of this one case. This case does not provide the Court an appropriate platform from which to establish new constitutional principles.

II.

THE WYOMING STATUTORY PROBATE PROCEDURE IS CONSISTENT WITH DUE PROCESS DECISIONS OF THIS COURT.

This Court's decisions have established a two part test to ascertain when a state's notice procedures violate due process. First, there must be a state deprivation of a constitutionally protected interest. Second, the challenged method of notice, to withstand constitutional scrutiny, must be reasonably calculated under the circumstances to

apprise parties holding such interests of the pendency of the action. This Court has held in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950) that "if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied." In this case both of these elements are absent from Petitioner's claim. The Petitioner did not have a constitutionally protected property interest in the Estate and the notice provisions of Wyo. Stat. § 2-7-205(b) are reasonably calculated to apprise interested parties of the sale of estate assets.

A. Petitioner Had No Property Interest.

1. As a Remainder Beneficiary of a Testamentary Trust Petitioner had no Constitutionally Protected Interest in the Disposition of Assets of the Estate.

This Court has long recognized "that [p]roperty interests, of course, are not created by the constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). Here, whether Petitioner had a "property interest" protected under the Constitution is a matter of Wyoming law. Wyoming law, both statutory and judicial, clearly does not grant a remainder beneficiary of a trust a property interest in the assets of a decedent's estate. Wyoming statutory law provides that title to a decedent's property "passes to the person to whom it is devised by his last will . . . " Wyo. Stat. § 2-7-402. This has long been the law of Wyoming. *Cook v. Elmore*, 25 Wyo. 393, 404, 171 P. 261, 264 (1918). The

Wyoming Supreme Court's decision in *In re Potter's Estate*, 396 P.2d 438, 447 (Wyo. 1964), put this issue to rest when it held that "[o]nly the executor, administrator, spouse, next of kin, heirs, legatees, devisees and creditors of the deceased or of the administration are parties interested in the estate." Furthermore, the Wyoming Supreme Court has long held that contingent or future "expectancies or possibilities of inheritance which may be fulfilled or defeated, depending upon various contingencies and situations" are not sufficient protectable property rights. *Jensen v. Jensen*, 4 Wyo. 224, 89 P.2d 1085, 1088 (1939); *cf Foster's Inc. v. City of Laramie*, 718 P.2d 868, 876 (Wyo. 1986) ("To have a property interest in a benefit, a person clearly must have . . . a legitimate claim of entitlement to it" citing *Board of Regents v. Roth*, 408 U.S. 564 (1972)).

In this case, upon the death of Mrs. Jones, the property of the Estate passed to First Security-Utah as Trustee, subject to possession of the personal representatives. The Petitioner had no property interest in the Estate to protect. Petitioner only had an interest in the Trust, which provided that Petitioner could receive, in the future, a share of its proceeds depending upon the fulfillment of certain contingencies.

2. Whatever Interest or Expectation Petitioner had in the Trust Assets Was Subject to the Management and Control of the Trustee.

The Trustee had the power, in its sole discretion, "without order or license of any court" to "sell, exchange, lease, pledge, mortgage, transfer, convert or otherwise dispose of . . . any and all property at any time forming a part of the Trust Fund, in such manner . . . as the Trustee

may deem advisable." (R. 17-19.) Thus, even if the personal representatives had not sold the Rife Ranch, the Trustee had sole discretion to do so without notice to the Trust beneficiaries.

The procedural protections accorded a property interest may be limited by the terms of an instrument that creates the interest. *Board of Regents v. Roth*, 408 U.S. 564 (1972). In *Roth*, an assistant professor at a state university claimed that he was denied due process before being deprived of his "property interest" in his continued employment. This Court, noting that his employment contract contained a termination date with no provision for renewal, disagreed:

> [T]he terms of the [professor's] appointment secured absolutely no interest in re-employment for the next year. They supported absolutely no possible claim of entitlement to re-employment. Nor, significantly, was there any state statute or university rule or policy that secured his interest in re-employment or that created any legitimate claim to it. In these circumstances, the respondent surely had an abstract concern in being rehired, but he did not have a *property* interest sufficient to require the University authorities to give him a hearing when they declined to renew his contract of employment.

408 U.S. at 578 (footnote omitted, emphasis by the court). In this case, neither the Trust's terms nor Wyoming probate procedure creates any "legitimate claim" for Petitioner to control disposition of Trust property. Yet, despite this fact, Petitioner argues that the due process clause *requires* Wyoming to provide for notice of such disposition in its probate procedure. Just as due process did not expand the terms of the assistant professor's

contract in *Roth*, that same clause cannot be read to create some right in the Petitioner to control the sale of the Trust property when that right is not provided by either the Trust's terms or Wyoming probate law.

3. Whatever Interest Petitioner had in the Trust Assets is Future and Conjectural.

While this Court recognizes the protection due process rights extend to property interests, "the range of interests protected by procedural due process is not infinite." *Board of Regents v. Roth*, 408 U.S. at 570. In *Mullane*, this Court noted that it is not "unreasonable for the state to dispense with more certain notice to those beneficiaries whose interests are either conjectural or future." *Mullane*, 339 U.S. at 317. "Nor is everyone who may conceivably have a claim properly considered a creditor entitled to notice." *Tulsa Professional Collection Services Inc. v. Pope*, 485 U.S. 478, 490 (1988). "Here, as in *Mullane*, it is reasonable to dispense with actual notice to those with mere 'conjectural' claims." *Id.* Clearly this Court has recognized that in the name of due process, notice requirements have their limits. Petitioner in this case had no interest in the Rife Ranch and should not be entitled to notice of its sale. It was not a beneficiary under the Will, it had no right to direct the Trustee concerning the Rife Ranch and its interest in the Trust proceeds was future and conjectural.

4. The Sale of the Rife Ranch Does Not Eliminate Petitioner's Recourse Against the Trustee.

The Wyoming Supreme Court's decision is consistent with this Court's decisions involving statutes which

extinguish potential causes of action. Petitioner's reliance on those decisions is misplaced. In *Mullane*, the deprivation of a property right was manifested by the fact that the New York judicial procedure eliminated the rights of the Trust beneficiaries to "have the trustee answer for negligent or illegal impairment of their interests." *Mullane*, 339 U.S. at 313. Similarly, in *Tulsa Professional Collection Services*, the Oklahoma statute required the filing of claims against an estate within two months of publication of a notice advising creditors of the commencement of probate proceedings. The effect of the Oklahoma statute was to "forever bar untimely claims, and by virtue of the statute, the probate proceedings themselves have completely extinguished appellant's claim." *Tulsa Professional Collection Services*, 485 U.S. at 488. In both cases the procedure barred any subsequent action against the Trustee and adjudicated the rights of the beneficiaries without notice.

Petitioner's claims are not extinguished here. The Wyoming District Court's order approving the sale of the Rife Ranch did not alter the obligation of the Trustee to the beneficiaries, it did not settle a final accounting of the Trust, nor did it eliminate any rights the Trust beneficiaries may have against the Trustee for mismanagement of the Trust. The District Court in this case noted as much, stating that if First Security-Utah was remiss in its assent to the sale, Petitioner's remedy would be to sue the bank for damages. (App. C6.) Indeed, the Petitioner has done just that.[13] Petitioner, unlike the trust beneficiaries in

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[13] Petitioner has brought suit against the Trustee for damages in Wyoming District Court, Third Judicial District, State of

(Continued on following page)

Mullane, or the creditors of the estate in *Tulsa Professional Collection Services*, has not been deprived of rights it may have against the Trustee.

Nor is Petitioner's claim against the Trustee diluted. In *Mullane*, this Court recognized that the judicial settlement of an accounting of a trust whereby the state court ratified the fees and expenses of the trustee was a diminution of the beneficiaries' interests, and in *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), the Court recognized that a tax sale whereby the mortgagee lost its secured interest in property to a tax-sale purchaser affected the mortgagee's interest. *Id.* at 798. The mortgagee in *Mennonite* had a remedy directly against the property, which the tax sale extinguished. Here, however, the sale does not dilute nor diminish the value of a beneficiary's claim against the Trustee. Petitioner had no right or claim of ownership or interest in the Rife Ranch, only a cause of action against its Trustee. That claim still exists, trust funds still exist and no court order has granted priority over Petitioner's claims against the Trustee, nor extinguished such claims.

Petitioner's reference to Wyoming Statute § 2-7-620 as a bar to suit against the Trustee for mismanagement is also misplaced. Wyo. Stat. § 2-7-620 provides that "no proceedings for sale, . . . by a personal representative of property belonging to the estate is subject to collateral

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(Continued from previous page)

Wyoming in a case entitled *Shriners Hospital for Crippled Children v. First Security Bank of Utah, et al.*, Civil No. C-89-247, which is still pending.

attack on account of any irregularity in the proceedings which do not deprive the court of jurisdiction." This statute makes no reference to a claim against the Trustee and clearly does not bar such an action.

B. Under This Court's Decisions Notice to The Trustee Was Sufficient.

Even if Petitioner had a constitutionally protected interest in the Estate, which it does not, due process was satisfied when the Trustee, as the beneficiary under the Will and the party with the protected property interest, was given notice of the sale. The notice given to the Trustee was appropriate for two reasons. First, a testamentary trustee is the trust beneficiaries' representative with regard to such sales and for purposes of notice thereof; a statute which assumes as much in determining what notice is required is reasonable. Second, no conflict existed in this case between the Trustee and the beneficiaries or among the beneficiaries that would preclude the trustee from acting as the beneficiaries' representative for purposes of notice of the sale.

1. The Wyoming Statute Provides For Reasonable Notice.

The Wyoming probate procedure challenged by Petitioner provides that the personal representative must give mailed notice of the proposed sale to the beneficiaries named in the will. The Wyoming Supreme Court interpreted this provision to require notice to the trustee of a testamentary trust as the named beneficiary in the will, but not to that trust's beneficiaries. (App. A9; B3.)

The due process clause should not be read as invalidating this reasonable statutory procedure.

In this case, the personal representative's notice to the Trustee was constitutionally sufficient notice to the remaindermen. "Generally the trustee has power to represent the beneficiary so that notice to the former is effective against the latter." G. Bogert, *Trusts and Trustees*, § 593 (2d ed. rev. 1980); *see Kerrison v. Stewart*, 93 U.S. 155 (1876). Wyoming's statutory procedure is consistent with this general rule. As the Wyoming Supreme Court recognized, Petitioner's argument that it was entitled to individual notice rather than through its Trustee ignores the "independent life" of the Trust. (App. A8.) To permit Petitioner to "bootstrap" its status as beneficiary under the Trust to that of a beneficiary under the Will would completely ignore the existence of the Trust, the Trustee's role, and the clear intent of Mrs. Jones as the testatrix.

The Wyoming statute makes a reasonable attempt to provide for notice to all interested parties. That is all that is required under *Mullane*. No statute can anticipate every possible conflict that might arise between a trustee and its beneficiaries. If, because of such a conflict, the statutory procedure fails to give notice to an adequate representative of the beneficiaries of a trust, perhaps some action against a trustee arises in favor of those parties. But such an action would be against a private entity, arising out of that entity's purely private conduct. Petitioner's quarrel is with the adequacy of its representative, not the sufficiency of Wyoming's statutory procedure for notice. Any imagined wrong done to Petitioner in this case is not the result of state action, and it is not of constitutional dimension.

2. No Conflicts Disqualified the Trustee.

Petitioner raises for the very first time the suggestion that a conflict of interest between the Trustee and the beneficiaries creates a basis for its assertion of a violation of due process. This issue was never raised at any level of this proceeding in the Wyoming courts. It was not raised at the District Court level, nor was it raised on either of the two proceedings before the Wyoming Supreme Court. As such, this issue was never presented to the Wyoming courts and should not now be appropriate for review by this Court. *Illinois v. Gates*, 462 U.S. at 217-220.

In any event, no conflict between the Trustee and the remainder beneficiary existed with respect to the Trustee's assent to sell the property in this case.[14] The law of trusts recognizes that "the trustee may represent the beneficiary in all actions relating to the trust, if rights of the beneficiary as against the trustee, or the rights of the beneficiaries among themselves, are not brought into question." G. Bogert, *Trusts and Trustees*, § 593 (2d ed. rev.

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[14] Although the trend is to extend a trustee's power of representation, an exception to the general rule permitting trustees to represent beneficiaries exists in the event of a conflict between a trustee and its beneficiaries or among the interests of the beneficiaries. G. Bogert, *Trusts and Trustees*, § 593 (2d ed. rev. 1980). The issue of the trustee's capacity to represent its beneficiaries in this case is one the Wyoming Supreme Court was and is "competent finally to decide." *Kersh Lake Drainage District v. Johnson*, 309 U.S. 485 (1940). Moreover, if the due process clause were read to mean that this narrow exception requires state statutes to provide for notice to trust beneficiaries whenever a possible conflict exists, the exception would overcome the general rule.

1980). Here, neither the personal representative, the Trustee, nor the beneficiaries of the Trust had any interest in obtaining less than fair market value from the sale of the property. Evidently, Petitioner disagreed with the decision to sell. But that is only a difference in judgment; it is not a conflict of interest that disqualified the Trustee from representing Petitioner despite that difference of opinion. The proceeding permitting the sale of the property did not approve any fees of the trustee as in *Mullane*, nor did it apportion the proceeds between the income beneficiary and the remaindermen.

Petitioner cites several cases in its Brief that it suggests demonstrate that First Security-Utah as Trustee was incapable of representing the beneficiaries in this case. None of these cases, however, support such a proposition. In each of these cases, the Trustee was positioned to withdraw assets from the Trust for its own use, apportion assets among beneficiaries, or foreclose some cause of action against itself. None of these cases involve the trustee's management of trust assets.

In *Mullane*, the Court held that trust beneficiaries were entitled to reasonable, direct notice of a proceeding approving the trustee's fees. The Court reasoned that in such a proceeding, the trustee became an adversary to the beneficiaries. *Mullane*, 339 U.S. at 316. Because of this adversarial relationship, the Court held that the trustee could not represent the beneficiaries' interests in a proceeding to approve his own fees. Thus, the Court held that the New York statute at issue, which provided for only published notice of the proceedings approving the trustee's fees, was invalid. *Id.*

Likewise, in *Hansen v. Peoples Bank of Bloomington*, 594 F.2d 1149 (7th Cir. 1979), the income beneficiary of a spendthrift trust brought an action to dissolve the trust and thereby eliminate the interests of the remainder beneficiaries. On the trustee's motion, the Seventh Circuit held that joinder of the remaindermen was required in a suit to dissolve a trust. As the Court noted, the trustee could not adequately represent the beneficiaries when the suit pitted the interests of the remainderman and the income beneficiary directly against each other. *Id.* at 1153.

Similarly, in *Wichita and Affiliated Tribes of Oklahoma v. Hodel*, 252 U.S. App. D.C. 140, 788 F.2d 765 (D.C. Cir. 1986), one income beneficiary sought apportionment of income without joining the other income beneficiaries. Again, that case involved a situation where the beneficiaries' interests conflicted because apportionment among the beneficiaries was sought. In *Azarian v. First National Bank of Boston*, 383 Mass. 492, 423 N.E. 2d 749 (1981), and *In the Matter of the Estate of Wiswall*, 11 Ariz. App. 314, 321, 464 P.2d 634, 641 (1970) the trustees sought approval of their accounts. And in *Estate of Lacy*, 54 Cal.3d 172, 126 Cal. Rptr. 432 (1975) an income beneficiary was not permitted to represent the remaindermen in an action regarding the invasion of the trust corpus.

In all of the cases cited by Petitioner, the issues involved apportionment of trust property between either the trustee or the income beneficiaries and the remaindermen. In such cases, as *Mullane* recognized, the nature of the proceeding is sufficiently adversarial because it divides trust property among the different interests. States may assume, however, that a trustee represents its beneficiaries in actions that do not, by their nature, involve an

adversarial relationship. Such an assumption does not offend *Mullane*. *Mullane*, 339 U.S. at 316. Courts recognize the principle that a trustee who may have a conflict of interest may nevertheless represent its beneficiaries in actions unrelated to that conflict. For example, in *Peterson v. United States*, 41 F.R.D. 31 (D. Minn. 1966), a case quite similar to the facts of this case, the executors of an estate served as trustees of a testamentary trust and one trustee was even an income beneficiary. Nevertheless, the District Court held that the executors could adequately represent the interests of the income beneficiaries and the remaindermen in an action to recover a payment made to the IRS. The court reasoned that all the beneficiaries, as well as the trustees and executors, had an identical interest in recovering the money even though, ultimately, each of the various interests stood to benefit differently from any recovery. 41 F.R.D. at 134. *See also, Kind v. Markham*, 7 F.R.D. 265 (S.D.N.Y. 1945).

When a proceeding at issue involves only the recovery or disposition of property on behalf of a trust, rather than apportionment of that property among the various parties interested in the trust, the trustee can adequately represent all concerned with the trust. Here, the Trustee has no conflict of interest with the income beneficiary or the contingent remaindermen with respect to the sale. The Trustee did not stand to gain any interest in the sale of the Rife Ranch, nor did it stand to eliminate any potential cause of action against it for the exercise of its discretion in its assent to the sale of the property.

CONCLUSION

The Wyoming Supreme Court concluded that, for purposes of probate, the beneficiaries of the Estate are the only persons or entities having an interest in the Estate for which notice of action is required. In that way the intentions of the decedent are carried forward. Even though Petitioner, as a trust remainderman beneficiary, may desire the powers of First Security-Utah, a Trustee, the decedent Mrs. Jones mandated otherwise. For these reasons, and all those set forth above, First Security-Utah and First Security-RS respectfully urge the Court to deny the Petition for a Writ of Certiorari to the Wyoming Supreme Court.

Respectfully submitted,

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APPENDIX A

In the Matter of the ESTATE OF
Velma Rife JONES, Deceased.
SHRINERS HOSPITALS FOR CRIPPLED
CHILDREN, Appellant (Petitioner),

v.

FIRST SECURITY BANK OF UTAH, N.A.,
Personal Representative; First Security
Bank of Rock Springs, Resident Personal
Representative; Rock Springs Grazing
Association; Lazy VD Land and Livestock;
Elza Eversole; and Lois M. Eversole,
Appellees (Respondents).

No. 88-4.
Supreme Court of Wyoming.

March 21, 1989.

Contingent beneficiary of testamentary trust established in will sought to set aside sale of estate property. The District Court, Sweetwater County, Kenneth G. Hamm, J., denied motion, and appeal followed. The Supreme Court, Brown, J., Retired, held that contingent beneficiary of testamentary trust was not entitled to individual notice of proposed sale of estate asset.

Affirmed.

Cardine, C.J., dissented and filed an opinion in which Rooney, J., Retired, joined.

Rooney, J., Retired, filed dissenting opinion in which Cardine, C.J., joined.

* * *

Before CARDINE, C.J., THOMAS and MACY, JJ., ROONEY and BROWN, Retired, JJ.

BROWN, Justice, Retired.

Appellant Shriners Hospitals for Crippled Children (Shriners), a contingent beneficiary of a testamentary trust established in the will of Velma Rife Jones, sought relief under W.R.C.P. 60(b) from an order authorizing and confirming the sale of estate assets. The district court denied the motion and Shriners appeals.

Shriners states the issues to be:

1. Whether Appellant has standing to claim relief under W.R.C.P., Rule 60(b).

2. Whether the District Court has the authority under W.R.C.P., Rule 60(b) to set aside the conveyance made pursuant to its Order Approving Sale of Real Property And Confirmation of Sale entered May 19, 1987.

3. Whether failure of Co-Personal Representatives to give Appellant the notice mandated by Wyo. Stat. (1977), §§ 2-7-615 and 2-7-205(b) nullifies the District Court's Order and Personal Representatives' Deed dated May 19, 1987.

4. Whether the purported sale of May 19, 1987 can be set aside because it was unnecessary and not in Appellant's best interest.

5. Whether it was reversible error for this court to cut-off Appellant's discovery and to deny Appellant the opportunity for a full and fair hearing of its claim under W.R.C.P., Rule 60(b).

Answering the following question, similarly posed in Issue No. 3, effectively disposes of all the issues raised by Shriners: Is a contingent beneficiary of a testamentary

trust entitled to separate and individual notice of a proposed sale of an estate asset in addition to notice given to the trustee? We answer that question in the negative and affirm the trial court.

Velma Rife Jones, a Utah resident, died testate on October 19, 1986. Her will contained specific bequests to several named cousins, if they survived her, and the residuary estate was left to appellee, First Security Bank of Utah, N.A., as trustee of a testamentary trust. Darrell Rife Mork, the decedent's sister, was named as lifetime beneficiary of the trust income, with the remainder to Shriners and the University of Utah if they qualified as organizations described in §§ 170(c) and 2055(a) of the Internal Revenue Code.

The assets of the estate included a Wyoming ranch, and the will was consequently admitted to ancillary probate in Wyoming. Appellees, First Security Bank of Utah and First Security Bank of Rock Springs, were appointed co-personal representatives. Appellees Rock Springs Grazing Association, Lazy VD Land and Livestock, and Elza Eversole were interested in buying the ranch, which was appraised at $1.2 million in 1985, and was reappraised at $925,000 in August, 1987. They formed a joint venture called Southern Wyoming Cattle Company and made a cash offer of $820,000 to the co-personal representative, First Security Bank of Utah. The trust officer made minor modifications to the offer and Southern Wyoming Cattle Company accepted those terms.

The co-personal representatives filed a petition for authority to sell the real property as required by W.S.

2-7-614 (July 1980 Repl.). The asserted reasons for the sale were that

> the Estate is in need of liquid assets to pay the debts, specific bequests, costs of administration and taxes of the Estate and that the ultimate beneficiary of the Estate (a trust for the benefit of Darrell Rife Mork, the sister of Velma Rife Jones during her lifetime and then after her death two charities) has no desire to own or operate the Rife Ranch.

The petition further stated that

> [t]here has been filed herein Waiver of Notice of hearing of the above matter by the only beneficiaries of the Estate of Velma Rife Jones, Deceased, and Petitioners believe that no notice of the hearing of the Petition needs to be given.

Attached to the petition were waivers of notice executed by the recipients of the five specific will bequests and First Security Bank of Utah as trustee of the testamentary trust.[1] No notice was given to Shriners or the University of Utah. On May 19, 1987, the court entered an order approving and confirming the sale.

On July 6, 1987, Shriners filed a W.R.C.P. 60(b) motion for relief from the order, requesting the court to set aside the sale and declare it void. Shriners asserted that the failure to provide notice to the contingent beneficiaries or remaindermen violated the statutory notice requirements. The relevant notice statutes provide:

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[1] The waiver from the bank initially states that First Interstate Bank of Utah is waiving notice. This no doubt is a typographical error.

> Upon filing of the petition, the court shall fix the time and place of hearing of the petition, and *the personal representative shall give notice of the hearing as provided in W.S. 2-7-205,* * * * . At the hearing and upon satisfactory proof the court may order the sale, mortgage, exchange, pledge or lease of the property described or any part thereof at such price and upon such terms and conditions as the court may authorize.

W.S. 2-7-615 (July 1980 Repl.) (emphasis added).

> Unless waived in writing by the parties entitled thereto, the notices required in W.S. 2-7-202, 2-7-203, 2-7-204, *2-7-615*, 2-7-806, 2-7-807 and 2-7-811 shall be mailed not less than ten (10) days prior to the date of hearing, the date for filing objections, or sale, as the case may be, to the surviving spouse, if any, and to all of the heirs of a decedent dying intestate or to *all of the beneficiaries named in the will of a decedent dying testate.*

W.S. 2-7-205(b) (July 1980 Repl.) (emphasis added).

Shriners asserted that it was one of the "beneficiaries named in the will" and was therefore entitled to notice. In response, the co-personal representatives argued that Shriners, as a trust beneficiary, was not entitled to notice, that Shriners was not entitled to file a motion for relief under W.R.C.P. 60(b), and that the motion for relief was an impermissible collateral attack on the district court's order. In disposing of the motion, the district court did not address the question of whether Shriners was one of the "beneficiaries named in the will" as that term is used in W.S. 2-7-205(b). Instead, the court relied on W.S. 2-7-620 (July 1980 Repl.), which provides:

> No proceedings for sale, mortgage, pledge, lease, exchange or conveyance by a personal

> representative of property belonging to the estate is subject to collateral attack on account of an irregularity in the proceedings which do not deprive the court of jurisdiction.

Relying on *Hartt v. Brimmer*, 74 Wyo. 338, 287 P.2d 638 (1955) and *Security-First National Bank of Los Angeles v. Superior Court of Los Angeles County*, 1 Cal.2d 749, 37 P.2d 69 (1934), the district court concluded that the estate administration was an in rem proceeding and, because the court had jurisdiction over the property and the personal representative, failure of notice to Shriners was not a jurisdictional defect. In addition, the court apparently concluded that Shriners' motion constituted a collateral attack concerning a non-jurisdictional matter. Shriners appeals from the denial of its W.R.C.P. 60(b) motion.

Although our legal analysis of the issues in this case differs from that employed by the trial court, the end result is the same.

Shriners contends that it is a beneficiary under the will and that its interest is vested, rather than contingent, and as a vested beneficiary it was entitled to notice of the proposed sale of an estate asset. In support of this reasoning, Shriners cites *In re Potter's Estate*, 396 P.2d 438 (Wyo. 1964); *McGinnis v. McGinnis*, 391 P.2d 927 (Wyo. 1964); and W.S. 2-7-402, 2-7-615 and 2-7-205. The cases cited by Shriners do not support its contentions.

Potter's Estate involved, among other things, the question of the vesting of real property in the heirs at law of a decedent who died intestate and the necessity of selling estate property. In that case, this court stated that "[o]nly the executor, administrator, spouse, next of kin, heirs, legatees, devisees, and creditors of the deceased or

of the administration are parties interested in the estate." *In re Potter's Estate*, 396 P.2d at 447.

In support of its contention that it is a vested beneficiary or vested remainderman, Shriners cites *McGinnis*. That case has nothing to do with determining the nature of Shriners' interest. In *McGinnis*, a family owned a ranch and in 1941 assigned the oil and gas royalties in trust to a bank. In 1956, one family member received royalty payments and refused to pay the royalties to the trustee. The rest of the family sued the relative, and he defended on the grounds that the assignment was illegal on the basis of the "rule against perpetuities," and that it was an unreasonable restraint on alienation. This court held the trust was valid. Neither *McGinnis* nor *Potter's Estate* involves notice or lack of notice to contingent beneficiaries or contingent remaindermen and has no relevancy in the case before us.

Clearly Shriners' interest in the trust property is not vested. "[A] vested remainder is one which is limited to a person in being, whose right to the estate does not depend on the happening or failure of any future event. *Safe Deposit & Trust Co. v. Bowse*, 181 Md. 351, 29 A.2d 906 [(1943)]. 8 Maryland L.Rev. 142." 28 Am.Jur.2d Estates, § 242, n. 6 (1966). There is at least one future circumstance that would prevent Shriners from ever receiving any benefits under the trust-if, at the time of his death of the life beneficiary of the trust, Shriners is not an "organization described in Section 170(c) and Section 2055(a) of the Internal Revenue Code of 1954 as amended * * * ." The resolution of the problem of notice does not depend, however, upon whether Shriners was a vested beneficiary

or a contingent beneficiary. It still was not a "beneficiary named in the will."

W.S. 2-7-402 (July 1980 Repl.) states in pertinent part:

> Except as otherwise provided in this code, when a person dies the title to his property, real and personal, passes to the person to whom it is devised by his last will, or in the absence of such disposition to the persons who succeed to his estate as provided in this code. However, all of his property is subject to the possession of the personal representative and to the control of the court for the purposes of administration, sale or other disposition under the provisions of law, * * * ."

Under W.S. 2-7-402, title to decedent's property passed to the person to whom it was devised. In this case it passed to First Security-Utah, as trustee, not Shriners or the University of Utah.

W.S. 2-7-615 requires that notice of the hearing for the sale of real property to be given as provided in W.S. 2-7-205 (July 1980 Repl.) "to all of the beneficiaries named in the will of a decedent dying testate." W.S. 2-7-615 and 2-7-205 in combination simply provide that notice of a hearing for the sale of estate property be given to "beneficiaries named in the will of a decedent dying testate." In this case, the beneficiary named in the will is the First Security Bank of Utah, not Shriners or the University of Utah. Shriners and the University of Utah are contingent beneficiaries under the testamentary trust established by decedent. Coincidentally, the terms of the will and the trust are set out in the same instrument, but each has independent life without regard to the other. Stated another way, the will is not dependent on the trust for its

legal existence nor is the trust dependent on the will. Shriners cannot "bootstrap" its status as a contingent beneficiary under the trust to a beneficiary under the will just because the terms of the will and the terms of the trust are set out in the same instrument. Furthermore, just because the testator of the will and the trustor or settlor of the trust is the same person does not make the beneficiary of the trust also the beneficiary "named in the will."

Limiting the requirements of notice to the beneficiaries named in the will, as required by W.S. 2-7-205 and as we have done here, has practical significance. If the contingent beneficiaries of the trust were a large group of persons, an intolerable burden on the administration of the estate would develop and lead to expensive, endless and needless litigation if notice of the sale of an estate asset need be given to each individual contingent beneficiary under the testamentary trust.

Our holding in this case is simply that a contingent beneficiary of a testamentary trust is not entitled to individual notice of the proposed sale of an estate asset. This holding makes it unnecessary to address other issues raised by Shriners.

Affirmed.

CARDINE, C.J., files a dissenting opinion in which ROONEY, Retired J., joined.

ROONEY, Retired J., files a dissenting opinion in which CARDINE, C.J., joined.

CARDINE, Chief Justice, dissenting, with whom ROONEY, Justice, Retired, joins.

I would reverse.

On the issue of notice, Shriners advances two arguments. First, it asserts that it is one of the "beneficiaries named in the will" as that term appears in W.S. 2-7-205(b). Second, it argues that, because of its property interest in the estate, notice is required by the Due Process Clause of the United States Constitution. I would hold that appellant is correct on both counts. Shriners, however, was a "beneficiary" named in the will, and that alone was sufficient to require notice.

It is quite astonishing that the court concludes that contingent beneficiaries are not beneficiaries and therefore not entitled to notice of disposition at private sale of a significant asset. Even more astonishing is the suggestion that a will containing trust provisions is not a will or that trust provisions in a will are not part of the will. The instrument involved here is titled "Last Will and Testament of Velma Rife Jones." Within the body of the instrument is established a trust in which appellant is a named beneficiary. There is no settled law of which I am aware that permits the court to hold that what it does not like in a will simply is not in the will.

To complete this strange circle of result justification is the suggestion that some policy is served by denying notice because contingent beneficiaries may be "a large group of persons" and notice to them would be "expensive," an "intolerable burden" and lead to "endless * * * litigation." And so for expediency, the court approves this sale without the beneficiary, in whom title may ultimately vest, receiving notice or having the right to be heard. The result in this case was sale of a ranch

first appraised for $1,200,000 being sold for the sum of $820,000. Perhaps the amount received for sale of the ranch was reasonable. But one cannot help but wonder, why not give notice of the sale to named beneficiaries.

The Wyoming probate code does not define the term "beneficiaries." When construing statutes, however, "[w]ords and phrases shall be taken in their ordinary and usual sense" and "technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import." W.S. 8-1-103. In its ordinary and usual sense, the term "beneficiary" means "one who receives something." Webster's Third New International Dictionary (1971). In law, "beneficiary," standing alone, is defined as "[o]ne who benefits from [the] act of another." Black's Law Dictionary (5th ed. 1979). Shriners surely receives something and benefits from the act of the testatrix, Velma Rife Jones. If it meets the qualifications set forth in the will, it is entitled to a remainder interest in the estate. In addition, Shriners is unquestionably "named in the will." Notice, therefore, was required by W.S. 2-7-615 and 2-7-205(b).

ROONEY, Retired Justice, dissenting, with whom CARDINE, C.J., joins.

I join in the dissent of Chief Justice Cardine. In addition to that said by him, I note that this is a *testamentary* trust. Contrary to that said in the majority opinion, it does not have any "independent life without regard to" the will, and it *is* "dependent on the will [for its legal existence]." Appellant benefits only because of the will, albeit through a trust established therein. As expressly set forth in the will, the intent of the testator was to benefit

the appellant-not the trustee. Appellant was a beneficiary named in the will as provided in W.S. 2-7-615.

It would serve no purpose to address in this dissent the other issues presented in this case which become pertinent once appellant is recognized to be a beneficiary under the will. Whether or not I would find reversible error therein is not important.

APPENDIX B

In the Matter of the ESTATE OF
Velma Rife JONES, Deceased.
SHRINERS HOSPITALS FOR CRIPPLED
CHILDREN, Appellant (Petitioner),

v.

FIRST SECURITY BANK OF UTAH, N.A.,
Personal Representative, First Security
Bank of Rock Springs, Resident Personal
Representative; Rock Springs Grazing
Association; Lazy VD Land and Livestock;
Elza Eversole; and Lois M. Eversole,
Appellees (Respondents).

No. 88-4.
Supreme Court of Wyoming.
Nov. 15, 1989.

On Rehearing of Appeal from the District Court of Sweetwater County; Kenneth G. Hamm, Judge.

* * *

Before CARDINE, C.J., THOMAS, MACY and GOLDEN, JJ., and ROONEY, J., Retired.

ORDER DENYING PETITION FOR REHEARING AND CONFIRMING PRIOR DECISION

CARDINE, Chief Justice.

This case came on before the Court upon the Petition for Reargument and Rehearing of Appellant, Shriners Hospitals for Crippled Children, filed on April 5, 1989; Appellant's Brief in Support of Petition for Reargument and Rehearing, filed April 5, 1989; Appellant's Supplemental Brief upon Rehearing Pursuant to the Court's Order Dated April 21, 1989, filed May 18, 1989; Answer of Appellees, Rock Springs Grazing Association, Lazy VD

Land and Livestock, Elza Eversole and Lois M. Eversole to Petition for Reargument and Rehearing of Appellant, filed May 19, 1989; Brief on Rehearing of Appellees Rock Springs Grazing Association, Lazy VD Land and Livestock, Elza Eversole and Lois M. Eversole, filed May 19, 1989; Answer and Supporting Brief on Rehearing of Appellees First Security Bank of Utah, N.A. and First Security Bank of Rock Springs, filed May 22, 1989; and Brief of Amicus Curiae University of Wyoming upon Rehearing, filed May 22, 1989; and the oral argument of counsel, and the Court, having reviewed the file and record of the Court and the opinion of the Court in *Matter of Estate of Jones*, 770 P.2d 1100 (Wyo. 1989), finds and holds that:

The primary interest of the University of Wyoming as amicus curiae is expressed in its statement of the issue as follows:

> "1. Whether the property interest of the remainderman of a charitable remainder trust is a contingent interest or vested interest subject to complete defeasance."

The Shriners Hospitals for Crippled Children also expressed concern about its categorization as a contingent beneficiary.

The Court is of the opinion that the prior decision of the Court should be confirmed insofar as it is expressed in the essence of the ratio decidendi:

> "The resolution of the problem of notice does not depend, however, upon whether Shriners was a vested beneficiary or a contingent beneficiary. It still was not a 'beneficiary named in the will.' " *Matter of Estate of Jones*, 770 P.2d at 1103.

The Court now is of the opinion that the description of the Shriners Hospitals for Crippled Children and the University of Utah as contingent beneficiaries of the testamentary trust is not a material concern with respect to the disposition of this case. Consequently, the Court withdraws that categorization and those portions of the prior opinion that seem to depend upon, or discuss, the status of Shriners Hospitals for Crippled Children and the University of Utah as contingent beneficiaries.

The Court understands that the requirement in the testamentary trust that those beneficiaries qualify as organizations described in §§ 170(c) and 2055(a) of the Internal Revenue Code is verbiage that is necessary to assure that the trust will be treated as a charitable remainder trust by the Internal Revenue Service. Consequently, it would appear that the point made by the University of Wyoming as amicus curiae that these beneficiaries should be perceived as vested beneficiaries whose interest may be defeated by the loss of their status as a charitable organization is sound and should be respected. We do not deem it necessary to so hold, however, any more than we now deem it to have been necessary to identify Shriners Hospitals for Crippled Children and the University of Utah as contingent beneficiaries.

The crux of this case is that any beneficiary of a trust created in a will is not a beneficiary under the will for purposes of the notice requirements of §§ 2-7-615 and 2-7-205, W.S. 1977. We need to make no further categorization of the status of Shriners Hospitals for Crippled Children than to conclude that it was not a "beneficiary under the will."

IT, THEREFORE, IS ORDERED that the Petition for Reargument and Rehearing of Appellant, Shriners Hospitals for Crippled Children, be, and the same hereby is, denied, and the opinion of the Court in *Matter of Estate of Jones*, 770 P.2d 1100 (Wyo. 1989), is confirmed except that is modified to withdraw therefrom any categorization of Shriners Hospitals for Crippled Children and the University of Utah as contingent beneficiaries.

ROONEY, Justice, Retired.

I would have granted the petition for the reasons set forth in my dissent and in the dissent of Chief Justice Cardine.

APPENDIX C

(Letterhead of)

THE STATE OF WYOMING
THIRD JUDICIAL DISTRICT

August 27, 1987

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Re: Estate of Velma Rife Jones
P-87-18

Gentlemen:

Section 2-7-620, W.S. 1977 provides:

> "No proceedings for sale, mortgage, pledge, lease, exchange or conveyance by a personal representative of property belonging to the estate is subject to collateral attack on account of any irregularity in the proceedings which do not deprive the court of jurisdiction."

Security-First Nat. Bank of Los Angeles v. Superior Court in and for Los Angeles County, et al., 37 P.2d 69 (Cal. 1934) seems particularly pertinent here, and I quote at some length from it:

> "The application to vacate the orders approving the first nine accounts of the trustee was made by W.R. Thomas, one of the nephews of the testatrix and a remainderman under the trust provisions and the decree of distribution. The

motion was addressed to the respondent court sitting in probate in the matter of said estate. The grounds of the motion were that the respective orders were void because the trustee failed to include in its petition for settlement the names and addresses of, and to give notice to, the beneficiaries as required by sections 1120 and 1200 of the Probate Code and section 1629 of the Code of Civil Procedure; and on the further ground that the petition in each instance falsely stated that Sallie B. Wolcott was the sole beneficiary of the trust, when, in fact, the trustee knew that W.R. Thomas was such beneficiary and that he resided at Houston, Texas."

* * *

"For the purposes of this proceeding, the petitioner does not dispute the fact that the remaindermen, as well as the cestul que trust, Sallie B. Wolcott, were beneficiaries under the trust, and that addresses of the beneficiaries and particularly of W.R. Thomas were alleged in the petition for the probate of the will. The respondents contend that these facts prove conclusively the lack of jurisdiction of the probate court to make the several orders settling the nine accounts of the trustee and the consequent invalidity thereof, for the reason, so it is claimed, that the court acquired no jurisdiction of W.R. Thomas in said nine proceedings."

* * *

"The question is not concluded by the undisputed facts. A proceeding pursuant to section 1699 of the Code of Civil Procedure, or section 1120 of the Probate Code, like other successive proceedings in the probate and execution of a will or the administration of an estate, is a proceeding in rem." (Citations omitted).

* * *

"The same presumptions as to the validity of its final orders and decrees apply as to judgments and orders of any court of general jurisdiction." (Citations omitted).

* * *

"Therefore a subsequent application in the administration of the same estate to set aside a previous order entered in the course of probate jurisdiction after the same has become final is a collateral attack, and, unless the order is void on its face, it may not on such attack be set aside." (Citations omitted).

The Wyoming case of Hartt v. Brimmer, 287 P.2d 638, 648 (Wyo. 1955) held the failure to give a notice in a probate proceeding was not jurisdictional. The Court said:

"Before proceeding any further we should mention the fact that we have held, though under facts somewhat different, that such notice is not jurisdictional. In re Lane's Estate, 50 Wyo. 119, 58 P.2d 415, 60 P.2d 360, and cases cited. There are, it is true, authorities to the contrary. The question was discussed at length in In re Towndrow's Will, 47 N.M. 173, 138 P.2d 1001, in which notice was given by publication but no personal service was had as required by statute. *The court held that such personal service was not jurisdictional and that the decree admitting the will to probate could not be attacked collaterally. We think we should adhere to the rule heretofore announced by us.* It is more consonant with the common law rule at which a will probated ex parte and without any notice to the heirs was a valid order. In re Towndrow's Will, supra."

And, on page 649:

> *"The proceeding for admitting the will to probate is in rem.* The court, as stated in the petition herein, recited that due notice had been given to the parties. *It then had jurisdiction in the case and its decree cannot be attacked collaterally.* In re Towndrow's Will, supra; In re Lane's Estate, supra. The situation here presents at most a defect or irregularity in the service of the requisite notice."

As counsel notes:

> "The situation in the case at bar is nearly identical to *Hartt*. The only difference is that the activity at issue in the case at bar is a sale of estate property rather than admission of a will to probate. It is axiomatic that the sale of estate property is an in rem proceeding. Thus the factual difference between *Hartt* in the case at bar is of no import."

It is also clear that the Court had subject matter jurisdiction inasmuch as district courts have jurisdiction over probate matters, and also that the Court had jurisdiction over the real property and the personal representative.

Furthermore, as noted in *Hartt*, supra, whether the attack is collateral or direct is immaterial. The Court said, on page 654:

> "The authorities are divided on the question as to whether an action in equity to set aside a judgment or an order is a direct or a collateral attack. 31 Am. Jur. § 614, p. 206. The author of the Annotation in L.R.A. 1918D, 470 seems inclined to the view that it is a direct attack. See Poston v. Delfelder, 39 Wyo. 163, 270 P. 1068, 273 P. 176, on rehearing. We need not decide the point. *We think it makes no difference which view is taken so far as this case is concerned. The probate*

> *proceedings involved were proceedings in rem. The court had jurisdiction to enter the order admitting the will to probate. There was at most a defect or irregularity in the process. As we have seen, courts of equity are, to say the least, ordinarily hesitant to set aside a judgment for mere irregularity in the process,* see also 34 C.J.S., Executors and Administrators, §§ 527, 528, pp. 447, 448, note 92, and will not do so if the attack thereon is not made promptly and so belatedly as in the case at bar. The effect is the same as though the attack were collateral. See Poston v. Delfelder, supra, on rehearing. We do not say what should be the rule if a case of real hardship should be presented. We have no such case before us. We think the result herein should be the same even if we do not consider the probate court to be distinct from the district court."

It is questionable that the giving of notice to Shriners Hospital would have made any difference whatsoever. The original offer to buy was made April 28, 1987, a counter-offer made April 30, 1987 and accepted May 1, 1987. The petition for authority to sell was filed May 19, 1987, the sale was confirmed May 19, 1987, and on the same day various deeds were executed and delivered. It was not until July 6, 1987 that the Motion for Relief was filed by Shriners and only shortly before that that the alleged prospective purchaser disclosed that he was willing to pay a higher price for the property. Therefore, had Shriner been told of the pending sale for $820,000.00, it would not have had before it any other offer to consider. The University of Utah, on July 20, 1987, joined with Shriners' motion, yet the executive director of the University, on July 23, 1987, wrote the vice-president of the First Security Bank saying "It was wonderful news about the

selling of the Wyoming property. I appreciate you keeping me informed."

There is some suggestion in the file that possibly the First Security Bank may have been remiss in failing to seek out other possible buyers. If that is so, perhaps Shriners' best remedy is to sue the bank for damages.

I regret that I have not addressed all of the issues presented in counsels' excellent briefs as it is my general custom, but I am inundated at the moment, and feel that the above approach resolves the problem. However, I also adopt by this reference all other legal arguments and principles submitted by counsel for the purchasers and the First Security Bank, in support of their position to the extent they are applicable. Shriners' counsel is also reminded that all briefs are required to be on 8 1/2 x 11 paper by Rule 403 of the Uniform Rules for the District Courts.

Mr. Ragsdale will please prepare an order denying the Motion, send a copy to Mr. Burgess and Mr. Finn and the original to me for signature.

By the Court,

/s/ KENNETH G. HAMM
Kenneth G. Hamm
District Judge

KGH/cjv

November 4, 1987

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Re: Estate of Velma Rife Jones
P-87-18

Gentlemen:

The opinion I write on the above matter, dated August 27 , 1987, was based upon a point of law. That point of law was that the proceedings concerning the sale of the property could not be collaterally attacked. Therefore, as I saw it then and see it now, further discovery will not change that point of law. Pace v. Hadley is not applicable as far as this case is concerned.

Accordingly, movants Objections to Proposed Order Denying Motion for Relief From Order Under Wyoming Rules of Civil Procedure, Rule 60(b) of Shriner's Hospitals for Crippled Children are denied.

By the Court,

/s/ KENNETH G. HAMM
Kenneth G. Hamm
District Judge

KGH/cjv

APPENDIX D

U.S.C.A. Const. Amend. 14

* * *

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

TITLE 2. Wills, Decedents' Estates and Probate Code
CHAPTER 7. Administration of Estates
ARTICLE 2. Notices

§ 2-7-202. Public auction of real or personal property; contents.

(a) When a sale or real or personal property of a decedent is ordered and is to be made at public auction, notice of the time and place of sale shall be published in a daily or weekly newspaper of general circulation in the county in which the probate is pending and in the county in which such property is situated once a week for three (3) consecutive weeks next before the sale, except in the case of perishable and other personal property likely to depreciate in value or which will incur loss by being kept, and as much other personal property as may be necessary to pay the allowance made to the family of the decedent.

(b) Notice shall set forth the time and place of sale and a description of the property offered for sale, and may provide that any and all bids may be rejected by the personal representative.

(c) A copy of the notice shall also be mailed as provided in W.S. 2-7-205.

(Laws 1979, ch. 142, § 1; 1980, ch. 54, § 1.)

TITLE 2. Wills, Decedents' Estates and Probate Code
CHAPTER 7. Administration of Estates
ARTICLE 2. Notices

§ 2-7-205. Parties entitled to receive.

(a) A true copy of the notice required in W.S. 2-7-201 shall be mailed by ordinary United States mail, first class, to:

(i) The surviving spouse, if any, and to all of the heirs at law of the decedent and to all of the beneficiaries named in the will of the decedent. The mailings shall be made not later than one (1) week after the first publication of the notice in the newspaper; and

(ii) Each creditor of the decedent whose identity is reasonably ascertainable by the personal representative within the time limited in the notice to creditors. The mailing shall be made not later than thirty (30) days prior to the expiration of three (3) months after the first publication of the notice in the newspaper.

(b) Unless waived in writing by the parties entitled thereto, the notices required in W.S. 2-7-202, 2-7-203, 2-7-204, 2-7-615, 2-7-806, 2-7-807 and 2-7-811 shall be mailed not less than ten (10) days prior to the day of hearing, the date for filing objections, or sale, as the case

may be, to the surviving spouse, if any, and to all of the heirs of a decedent dying intestate or to all of the beneficiaries named in the will of a decedent dying testate.

(c) Notice of all intended sales of real property not requiring an order of the court shall be mailed or delivered not less than ten (10) days prior to the sale to the surviving spouse, if any, and to the heirs of a decedent dying intestate or to all of the beneficiaries named in the will of a decedent dying testate.

(Laws 1979, ch. 142, § 1; 1980, ch. 54, § 1; 1989, ch. 114, § 1.)

TITLE 2. Wills, Decedents' Estates and Probate Code
CHAPTER 7. Administration of Estates
ARTICLE 4. Marshalling Assets

§ 2-7-402. Title to decedent's property; subject to administration and payment of debts; priorities.

Except as otherwise provided in this code, when a person dies the title to his property, real and personal, passes to the person to whom it is devised by his last will, or in the absence of such disposition to the persons who succeed to his estate as provided in this code. However all of his property is subject to the possession of the personal representative and to the control of the court for the purposes of administration, sale or other disposition under the provisions of law, and his property, except homestead and other exempt property, is chargeable with the payment of debts and charges against his estate. There is no priority between real and personal property, except as provided in this code or by the will of the decedent.

(Laws 1979, ch. 142, § 1; 1980, ch. 54, § 1.)

TITLE 2. Wills, Decedents' Estates and Probate Code
CHAPTER 7. Administration of Estates
ARTICLE 6. Sale and Other Disposition of Property

§ 2-7-614. Petition to sell, etc.; generally.

A petition to sell, mortgage, exchange, pledge or lease any real or personal property shall set forth the reasons for the petition and describe the property involved. It may apply for different authority as to separate parts of the property, or it may apply in the alternative for authority to sell, mortgage, exchange, pledge or lease. Whenever it is for the best interests of the estate, real and personal property of the estate may be sold, mortgaged, exchanged, pledged or leased as a unit.

(Laws 1979, ch. 142, § 1; 1980, ch. 54, § 1.)

TITLE 2. Wills, Decedents' Estates and Probate Code
CHAPTER 7. Administration of Estates
ARTICLE 6. Sale and Other Disposition of Property

§ 2-7-615. Petition to sell, etc.; notice and hearing; exception; court order.

Upon filing of the petition, the court shall fix the time and place of hearing of the petition, and the personal representative shall give notice of the hearing as provided in W.S. 2-7-205, but as to personal property and as to the lease of real property not specifically devised for a period of not to exceed one (1) year, the court may hear the petition without notice. In those instances where notice is required, the notice shall state briefly the nature of the petition. At the hearing and upon satisfactory proof

the court may order the sale, mortgage, exchange, pledge or lease of the property described or any part thereof at such price and upon such terms and conditions as the court may authorize.

(Laws 1979, ch. 142, § 1; 1980, ch. 54, § 1.)

TITLE 2. Wills, Decedents' Estates and Probate Code
CHAPTER 7. Administration of Estates
ARTICLE 6. Sale and Other Disposition of Property

§ 2-7-620. Collateral attacks precluded.

No proceedings for sale, mortgage, pledge, lease, exchange or conveyance by a personal representative of property belonging to the estate is subject to collateral attack on account of any irregularity in the proceedings which do not deprive the court of jurisdiction.

(Laws 1979, ch. 142, § 1; 1980, ch. 54, § 1.)

* * *

Wyoming Rules of Appellate Procedure

Rule 5.07. Service of briefs on attorney general.

In all cases both criminal and civil, in which the state is a party, or in which any of its property is involved, or in which a statute, ordinance or franchise is alleged to be unconstitutional, including criminal cases upon reserved questions, and cases arising upon exceptions taken in a criminal case by the prosecuting attorney, counsel shall also serve a copy of their brief upon the attorney general.